

STATE OF MINNESOTA

IN SUPREME COURT

A19-1401

Ramsey County

Anderson, J.

Raymond Cortez Steward,

Appellant,

vs.

Filed: November 12, 2020  
Office of Appellate Courts

State of Minnesota,

Respondent.

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Raymond Cortez Steward, Rush City, Minnesota, pro se.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant Ramsey County Attorney, Saint Paul, Minnesota, for respondent.

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S Y L L A B U S

1. The district court did not err by denying appellant's motion to correct his sentence under Minn. R. Crim. P. 27.03 because it was not an abuse of the court's discretion to conclude that his conviction did not violate Minn. Stat. § 611.02 (2018).

2. Appellant forfeited review of his claim that the three guilty verdicts violate Minn. Stat. §§ 609.04 and 609.035 (2018) by failing to raise these arguments in his motion to the district court.

3. Even if appellant had not forfeited review, appellant's claims under Minn. Stat. §§ 609.04 and 609.035 fail on the merits.

Affirmed.

Considered and decided by the court without oral argument.

## OPINION

ANDERSON, Justice.

A Ramsey County jury found appellant Raymond Cortez Steward guilty of first-degree premeditated murder, second-degree intentional murder, and second-degree felony murder in connection with the shooting death of Talvous McKinney. The district court convicted Steward of first-degree premeditated murder and sentenced him to life with the possibility of release after 30 years. On direct appeal, we affirmed his conviction. Seventeen years later, Steward moved to correct his sentence, claiming that his conviction violated Minn. Stat. § 611.02 (2018). Under section 611.02, when “there exists a reasonable doubt as to which of two or more degrees the defendant is guilty,” a defendant shall be convicted of only the lowest degree offense. The district court denied Steward's motion without holding an evidentiary hearing. Because the district court did not abuse its discretion in doing so, we affirm.

## FACTS

On July 4, 2000, Steward fatally shot Talvous McKinney.<sup>1</sup> A grand jury indicted Steward for first-degree premeditated murder and second-degree intentional murder. Steward pleaded not guilty. During the trial, the district court instructed the jury on the two charged offenses. Steward also asked for, and the district court agreed to, a jury instruction on the offense of second-degree felony murder. The jury returned guilty verdicts on all three offenses.

The district court entered a judgment of conviction of first-degree premeditated murder and imposed a sentence of life with the possibility of release after 30 years.<sup>2</sup> The court dismissed the second-degree intentional murder and second-degree felony murder offenses, and no sentence was imposed in connection with those offenses.

On direct appeal, Steward claimed that he was denied a fair trial. Steward argued that the district court abused its discretion by admitting evidence of Steward's gun-shaped

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<sup>1</sup> Only the facts relevant to this appeal are recited here. More details about the murder and Steward's conviction are set forth in *State v. Steward*, 645 N.W.2d 115, 118-20 (Minn. 2002).

<sup>2</sup> In its brief to our court, the State mistakenly describes Steward's sentence as "life in prison without the possibility of release." It appears this mistake was recognized by the State in the disposition of a related motion filed by Steward in district court to address a custody credit dispute. *Steward v. State*, No. 62-K5-00-2925, Order (Ramsey Cnty. Dist. Ct. filed Sept. 9, 2020).

jewelry. *State v. Steward*, 645 N.W.2d 115, 118 (Minn. 2002). He also argued that the prosecutor engaged in misconduct. *Id.* We affirmed Steward’s conviction.<sup>3</sup> *Id.* at 125.

In 2019, Steward, representing himself, moved to correct his sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, which states: “The court may at any time correct a sentence not authorized by law.” In his supporting affidavit, Steward claimed that his sentence was “un-authorized” because the jury returned multiple guilty verdicts for one single behavioral act. According to Steward, the three verdicts showed that the jury had a “reasonable doubt” about which degree of murder he was guilty. Based on this alleged doubt, Steward argued that his conviction for first-degree premeditated murder violated Minn. Stat. § 611.02 (“[W]hen . . . there exists a reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest [degree].”). The State did not directly respond to Steward’s section 611.02 argument. Instead, the State argued that Minn. Stat. § 609.035, subd. 1 (2018), expressly allows a court to enter a sentence for one crime arising from a single behavioral incident. Because Steward was convicted of and sentenced on only the first-degree premeditated murder offense, the State argued that Steward’s conviction and sentence were lawful.

Without holding an evidentiary hearing, the district court denied Steward’s motion to correct his sentence. The district court explained: “In this case, Petitioner was found guilty by jury of all three [offenses]. There was no reasonable doubt as to which offense

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<sup>3</sup> Five months later, Steward, representing himself, filed a petition for postconviction relief. The petition raised claims of prosecutorial misconduct and ineffective assistance of counsel. The district court denied the petition without holding an evidentiary hearing. Steward filed an appeal that was later dismissed for inactivity.

he was found guilty. He was lawfully convicted of and sentenced to the most serious offense.” Steward appealed.

## ANALYSIS

Steward argues that the district court erred when it denied his motion to correct his sentence without an evidentiary hearing. Steward renews the claim that his first-degree murder conviction is unlawful because it violates Minn. Stat. § 611.02. Steward also claims, for the first time on appeal, that the three guilty verdicts in his case violate both the prohibition against multiple convictions for a crime and a lesser degree of the same crime as provided in Minn. Stat. § 609.04, subd. 1 (2018), as well as the prohibition against multiple punishments for a single act as provided in Minn. Stat. § 609.035, subd. 1. For the reasons that follow, we conclude that the first-degree murder conviction does not violate Minn. Stat. § 611.02, Steward forfeited review of his claims that the three guilty verdicts violate sections 609.04 and 609.035, and even if he had not forfeited review, these claims fail on the merits.

### I.

We first address Steward’s claim that his conviction and sentence violate section 611.02. Minnesota Rule of Criminal Procedure 27.03, subdivision 9, authorizes a court, at any time, to correct a sentence not authorized by law.<sup>4</sup> “For a sentence to be unauthorized,

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<sup>4</sup> In the district court, the State did not argue that Steward’s motion should be treated as a postconviction petition or that the two-year statute of limitations should apply. *See State v. Coles*, 862 N.W.2d 477, 482 (Minn. 2015) (“Because Coles’ challenge to his sentence implicates more than simply his sentence, we conclude that it is properly viewed as a petition for postconviction relief under Minn. Stat. § 590.01, not as a motion to correct

it must be contrary to law or applicable statutes.” *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). The defendant must prove the facts necessary to show that the sentence is unauthorized. *See Williams v. State*, 910 N.W.2d 736, 742 (Minn. 2018).

We review a district court’s denial of a motion to correct a sentence for an abuse of discretion. *Munt v. State*, 920 N.W.2d 410, 414 (Minn. 2018). We will reverse the district court only when it has “exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Evans v. State*, 925 N.W.2d 240, 242 (Minn. 2019) (quoting *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010)).

We begin with a recitation of the three offenses under which the jury returned guilty verdicts. The first-degree premeditated murder statute makes it a crime to cause “the death of a human being with premeditation and with intent to effect the death of the person or of another.” Minn. Stat. § 609.185 (1) (2000). By contrast, the second-degree intentional murder statute makes it a crime to cause “the death of a human being with intent to effect the death of that person or another, *but without premeditation*.” Minn. Stat. § 609.19, subd. 1(1) (2018) (emphasis added). Finally, the second-degree felony murder statute makes it a crime to cause “the death of a human being, *without intent* to effect the death of any

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a sentence under Rule 27.03.”); *Munt v. State*, 920 N.W.2d 410, 414-15 (Minn. 2018) (noting that a motion *characterized* as a “motion to correct a sentence,” which actually challenges an underlying conviction, is subject to the two-year statute of limitations applicable to postconviction claims). As a result, the State has forfeited such an argument on appeal. *Troxel v. State*, 875 N.W.2d 302, 313 n.3 (Minn. 2016) (“[F]orfeiture . . . refers to the failure to make a timely assertion of a right.”). Based on the State’s forfeiture, we treat Steward’s motion as a Rule 27.03 motion even though it arguably exceeds the scope of a proper motion to correct a sentence.

person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting.” Minn. Stat. § 609.19, subd. 2(1) (2018) (emphasis added).

Relying on the “without” clauses for the second-degree offenses, Steward claims that the three guilty verdicts show that the jurors could not decide whether he committed the murder with premeditation and intent or without premeditation and intent. Based on this alleged doubt, Steward renews his argument that his conviction for first-degree premeditated murder violates Minn. Stat. § 611.02. But Steward’s argument is founded on a mistaken belief that the “without” clauses of the second-degree offenses make them legally inconsistent with one another and with the first-degree murder offense.

Multiple guilty verdicts on various degrees of murder offenses can be logically inconsistent without being legally inconsistent. *See State v. Moore (Moore I)*, 438 N.W.2d 101, 108 (Minn. 1989). Convicting a defendant after a jury renders logically inconsistent verdicts is not an error, but doing so after a jury renders legally inconsistent verdicts is an error. *See State v. Crowsbreast*, 629 N.W.2d 433, 440 (Minn. 2001); *State v. Leake*, 699 N.W.2d 312, 325-26 (Minn. 2005). Whether verdicts are legally inconsistent is a question of law, which we review de novo. *Leake*, 699 N.W.2d at 325.

Verdicts are legally inconsistent only “when proof of the elements of one offense negates a necessary element of another offense.” *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). For example, we have held that guilty verdicts on both first-degree premeditated murder and second-degree manslaughter are legally inconsistent because the first offense requires the State to prove that a death was caused with premeditation and intent, while the

second offense requires the State to prove that a death was caused through negligent or reckless conduct. *State v. Moore (Moore II)*, 458 N.W.2d 90, 94 (Minn. 1990). The elements of those two offenses negate each other because it is not possible to commit an act both negligently and intentionally. *Id.* But a “without” clause in which existence of the fact referenced in the clause would constitute a more serious offense does not set out an element of the offense—it merely causes one offense to be a lesser-included offense to the other.<sup>5</sup> *State v. Hall*, 931 N.W.2d 737, 741 (Minn. 2019).

In *Moore I*, we specifically addressed the “without premeditation” clause in the second-degree intentional murder statute, holding that the clause is not an essential element of the crime—the State need not prove that the murder occurred “without premeditation.” 438 N.W.2d at 108. Thus, “[g]uilty verdicts for first and second degree murder are not legally inconsistent.” *Id.* And in *Cole*, we specifically addressed the “without intent to effect the death of any person” clause in the second-degree felony murder statute, holding that the clause did not constitute an element that the State must prove. 542 N.W.2d at 50-51. Thus, second-degree felony murder is not legally inconsistent with second-degree intentional murder or first-degree premeditated murder. Second-degree intentional murder

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<sup>5</sup> Lesser-included offenses are generally legally *consistent* with their greater offense counterparts. *See State v. Hall*, 931 N.W.2d 737, 740-42 (Minn. 2019). This is different from statutes in which the “without” clause is either a necessary element of an offense or an affirmative defense because the fact referenced in the clause makes the conduct not criminal. *Id.* at 743. For example, trespassing upon the land of another “without claim of right” is not a criminal act unless the State proves that the individual is on another’s property without a right to be there. *Id.* at 742.

and second-degree felony murder are two different, lesser-included offenses to first-degree premeditated murder.

As our decisions in *Moore I* and *Cole* make clear, Steward’s claim of legal inconsistency is based on a misunderstanding of the important distinction between multiple murder offenses that have different, contradictory elements—such as premeditated or intentional conduct versus reckless or negligent conduct—and multiple murder offenses that are simply lesser-included offenses of a greater offense—such as premeditated or intentional conduct versus conduct without premeditation or intent. As a matter of law, the offenses for which Steward was found guilty are not legally inconsistent with one another because proving the necessary elements of each offense does not negate an element of the other two. Consequently, the district court did not abuse its discretion by concluding that Steward’s conviction of first-degree premeditated murder did not violate section 611.02.

## II.

We next consider Steward’s claims that the jury’s verdicts finding him guilty of all three offenses violate sections 609.04 and 609.035. Before considering the merits of these claims, we must decide whether they are properly before us.

An issue is not properly before our court when it is raised “[f]or the first time in [a party’s] brief to our court.” *State v. Campbell*, 814 N.W.2d 1, 4 n.4 (Minn. 2012). “A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (internal quotation marks omitted). Generally, when an issue has not been raised

before the district court, we consider the issue forfeited. *State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016).

Here, Steward's entire supporting affidavit to his motion to correct his sentence reads:

1.) SENTENCE IS UN-AUTHORIZED.

A.) MURDER 1PREMEDITATED STATUE:609.185.1

B.) MURDER 2ND DEGREE STATUE:609.19.11

C.) MURDER 2 W/O INT/CFELON STATUE:609.19.21

2.) The judicial branch has deprived petitioner of SUBSANTIVE RIGHTS, BY NOT CREATING A RULE OF COURT PROCEDURE when a jury returns multiple verdicts rendered from a single behavior act, accord to LEGISLATIVE SUBTANTIVE RIGHT.

3.) Judiciary has deprived Petitioner/Resident of equal protection of the PROCEDURAL LAW PROCESS, (611.02).

4.) The sentencing court violated the accused right after the jury "RETURNED MULTIPLE VERDICTS OF GUILTS":

A.) MURDER 1PREMEDITATED STATUE: 609.185.1

B.) MURDER 2ND DEGREE STATUE: 609.19.11

C.) MURDER 2 W/O INT/CFELON STATUE: 609.19.21

Pursuant to the accused rights MINN.STAT.611.02 when an offense has been proved against the defendant and there exists a reasonable doubt as to which two or more degrees the defendant is guilty, "THE DEFENDANT SHALL BE CONVICTED ONLY OF THE LOWEST".

Because Steward is representing himself, we construe his affidavit liberally and with an understanding eye. *Andersen v. State*, 940 N.W.2d 172, 181 (Minn. 2020); *Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018).

Even when construed liberally and viewed with an understanding eye, nothing in Steward's affidavit asserts a claim that the three guilty verdicts violated section 609.04 or

section 609.035. Because Steward failed to raise these claims in the district court, we conclude that they are not properly before us.

### III.

Finally, even if Steward had not forfeited his claims that the three guilty verdicts violate section 609.04 and section 609.035, the claims fail on the merits because guilty verdicts are not criminal convictions.

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. An “included offense” is expressly defined to include “a lesser degree of the same crime.” *Id.*, subd. 1(1). The prohibition contained in section 609.04 prevents the State from convicting a person for both an offense and any lesser-included offenses. *Petersen v. State*, 937 N.W.2d 136, 140 (Minn. 2019). We have long held that the “conviction” referred to in section 609.04 is not a guilty verdict but instead a formal adjudication of guilt. *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999) (citing *State v. Martinson*, 312 N.W.2d 249, 251 (Minn. 1981)). For the purposes of this provision, a conviction “occurs only after the district court judge accepts, records, and adjudicates the jury’s guilty verdict.” *Pierson v. State*, 715 N.W.2d 923, 925 (Minn. 2006).

The prohibition contained in section 609.035, while similar, focuses on the issue of multiple sentences:

Except as provided in [subdivisions and sections that do not apply to this case], if a person’s conduct constitutes more than one offense under the laws of this state, the person may be *punished* for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any

other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

Minn. Stat. § 609.035, subd. 1 (emphasis added). The purpose of section 609.035 is “to limit punishment to a single sentence where a single behavioral incident result[s] in the violation of more than one criminal statute.” *State v. Bookwalter*, 541 N.W.2d 290, 293 (Minn. 1995) (alteration in original). Multiple punishments “refers not to multiple convictions but multiple sentences.” *Id.*

We have expressly held that receiving guilty verdicts on both a first-degree murder charge and a second-degree murder charge does not violate section 609.04 or section 609.035 when the defendant is convicted of and sentenced on only one offense. *Petersen*, 937 N.W.2d at 141. Further, we have also held that a conviction and sentence on first-degree premeditated murder is not a violation of section 609.035 when the defendant is found guilty of both first-degree murder and second-degree murder. *Id.* at 140–41. This is because section 609.035 “contemplates that a defendant will be punished for the most serious of the offenses arising from a single behavioral incident.” *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (internal quotation marks omitted).

At the completion of Steward’s trial, the jury returned guilty verdicts for all three offenses: first-degree premeditated murder, second-degree intentional murder, and second-degree felony murder. The district court then accepted and adjudicated the jury’s guilty verdict on the first-degree premeditated murder offense, imposed a sentence for that offense, and dismissed the remaining two offenses. The court also prepared a warrant of commitment. The warrant states that 1) the jury found Steward guilty of all three offenses,

2) the second-degree offenses were dismissed, and 3) a sentence of life in prison was imposed on the first-degree premeditated murder offense.<sup>6</sup> Steward was not convicted of, or punished for, either the second-degree intentional murder offense or the second-degree felony murder offense.<sup>7</sup> Therefore, Steward's claims under Minn. Stat. §§ 609.04 and 609.035 fail as a matter of law.

In sum, even if Steward had not forfeited these claims, the claims fail on the merits because guilty verdicts are not criminal convictions.

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

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<sup>6</sup> Steward contends that the warrant of commitment lists convictions for the lesser-included offenses of second-degree murder and second-degree felony murder in violation of section 609.04. But a correct reading of the warrant shows that the jury found Steward guilty on all three counts, counts two and three were dismissed (the second-degree offenses), and Steward was convicted of and sentenced on only count one (first-degree premeditated murder).

<sup>7</sup> See *Steward*, 645 N.W.2d at 120 n.6 (“At sentencing the district court entered a conviction for first-degree murder and dismissed the other charges.”).